IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 212 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARAT STARCH INDUSTRIES LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 212 of 2001

MR MANISH R BHATT for Petitioner No. 1

MR HASIT DILIP DAVE for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/02/2002

ORAL JUDGEMENT

The present petition is filed by the petitioner Company for sanction of a Scheme of reorganisation by way of arrangement, amalgamation and reconstruction between

the petitioner, BILT Bio Chemicals Ltd. and English Indian Clays Ltd. and scheme of reconstruction of Bharat Projects Ltd. u/s.391 read with section 394 of the Companies Act, 1956. The petitioner is the Transferor Company.

2. The Transferor Company is a limited company which started its operations in the year 1989 and is dealing in manufacture of citric acid and starch. The citric acid plant of the petitioner - Company is lying closed since June 28, 1998 on account of various problems in equipment and utility. BILT Bio Chemicals Ltd. and English Indian Clays Ltd., the Transferee companies are public limited companies of the same group. Since the petitioner Company and the Transferee companies belong to the same management group, the Board of Directors of these Companies thought it fit to restructure them through demerger / amalgamation / reconstruction for achieving synergic advantages. The petition gives details of the advantages that would flow by virtue of the Scheme.

3. In view of the order dated 12th September, 2001 in Company Application No.254 of 2001 notices convening meetings of the shareholders and the creditors were published in "Indian Express" English daily and "Gujarat Samachar" Gujarati daily both dated 27th September, 2001 containing the advertisement of the said notice convening the meetings. The meetings of the shareholders and the creditors of the Company were held on 23rd October, 2001. Mr D Kohli, Director of the petitioner Company appointed as a Chairman to convene the meeting has filed his report. As per the said report, 96.51% of the members present in person or by proxy or by ballot and 99.99% of the value of shares held by the members voted in favour of the Scheme. Similarly, as per the report filed by the Chairman of the said meeting, 98.03% of the secured /unsecured creditors present in person or by proxy or by ballot and 99.27% of the amounts owing to these secured/unsecured creditors voted in favour of the Scheme.

4. After the petition was admitted, the same was advertised in the newspapers viz., "Indian Express", English daily and "Gujarat Samachar" Gujarati daily both dated 11th November, 2001 as directed in the order dated 2nd November, 2001, publication in the Government gazette having been dispensed with.

5. Pursuant thereto, only one objection has been filed before this Court by Paharpur Cooling Towers Ltd.. The said Paharpur Cooling Towers Ltd. has stated that it

is a creditor of the petitioner - Company for an amount of Rs.14,37,760/-. It is further stated that the said creditor does not feel that the transfer of the respective undertaking as a going concern is going to benefit the unsecured creditors like them in any better manner.

6. I have considered the objection raised by the said creditor and also heard Mr Hashit Dave, learned advocate appearing for the said creditor. It appears that the said creditor has executed and commissioned the cooling tower plant and certain amounts are alleged to have been due and payable by the petitioner to the said creditor. On a perusal of the Scheme, it transpires that from the first and second appointed date, respective undertakings would be transferred to the first and second transferee companies as going concern and the liabilities to the extent specified in the Scheme shall be paid by the respective transferee Companies. Since the assets along with liabilities are being transferred to the respective Transferee Companies, as a going concern, I do not find that any prejudice would be caused to the objecting creditor. Further, in view of the fact that secured /unsecured creditors consisting of 98.03% of the secured /unsecured creditors present in person or by proxy or by ballot and 99.27% of the amounts owing by these secured/unsecured creditors have voted in favour of the Scheme, I do not see any reason to entertain the objection raised by the creditor.

7. Notice of the petition of the petitioner Company was served upon the Official Liquidator attached to this Court. The report dated 7th February,2002 filed by the Official Liquidator states that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or to the public interest.

8. Notice of the petition has been served upon the Central Government and Ms. PJ Davawala, Addl. Standing Counsel has appeared for the Central Government. Ms. Davawala has informed the Court, and put on record the letter from the Registrar of Companies of Gujarat dated 21st January, 2002 indicating, that the Central Government does not propose to object to the proposed Scheme of Amalgamation. In view of this, there is no reason to withhold sanction to the Scheme.

9. I have heard Mr MR Bhatt, learned counsel for the petitioner. Having gone through the petition, I am satisfied that the Scheme of reorganisation by way of arrangement, amalgamation and reconstruction would be in

the interest of the Company and its members and creditors. Prayers in terms of para 22 of the petition are hereby granted.

10. The petition is disposed of accordingly.

So far as the costs to be paid to the Central Government Standing Counsel are concerned, I quantify the same at Rs.3500/- and the same be paid to learned advocate, Ms. PJ Davawala.

(M.S. Shah,J)
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